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OFFICE OF PETITIONS

In re Application of :
Learmon et al. :
Application No. 10/767,779 : DECISION ON PETITION
Filed: 28 January, 2004 :
Atty Docket No. 21465-510 :

This is a decision in reference to the "PETITION TO CHANGE FILING DATE" filed on 8 March, 2006, which is treated as a petition requesting that the above-identified nonprovisional application, including drawing Figures 11C & 11D, be accorded a filing date of 28 January, 2004, instead of the presently accorded filing date of 22 September, 2004.

The petition is GRANTED.

On 28 January, 2004, the application was filed.

On 22 June, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of 28 January, 2004, but that, *inter alia*, Figures 11C & 11D described in the specification appeared to have been omitted from the application. The Notice also stated that replacement drawings in compliance with 37 CFR 1.84 and 1.121 are required.

In response, on 22 September, 2004, petitioners filed, *inter alia*, a one (1) month extension of time and replacement drawings, including Figures 11C & 11D. The application was then accorded a filing date of 22 September, 2004.

The present petition was filed on 8 March, 2006. Petitioners assert that (1) Figures 11C and 11D were not missing from the application papers deposited on 28 January, 2004, and (b) Figures 11C and 11D were incorporated by references from a prior-filed provisional application. In support, petitioners have provided an itemized return receipt postcard, bearing an "Office-date" stamp of "012804" including the above-identified application

number, and itemizing the filing of 41 sheets of drawings containing Figures 1-42. Petitioners have also supplied, inter alia, a copy of one sheet of drawings containing Figures 11C and 11D.

A review of the record reveals that 40 sheets of drawings were received on 28 January, 2004. No one (1) sheet of drawings containing Figures 11C and 11D is located among the drawing figures received on that date. However, the evidence is convincing that the application papers deposited on 28 January, 2004, included one (1) sheet of drawings containing Figures 10C and 10D, which was subsequently misplaced in the Office. Therefore, the application, including one (1) sheet of drawings containing Figures 11C and 11D, is entitled to a filing date of 28 January, 2004.


The "Notice" mailed on 22 June, 2004, is vacated to the extent that it stated that Figures 10C and 10D appeared to have been omitted.

In view of the above, the petition is granted. The petition fee will be credited to counsel's deposit account, as the petition was necessitated by Office error.

The application will be processed with the copy of one (1) sheet of drawings containing Figures 11C and 11D as a part of the original disclosure.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 28 January, 2004, using the application papers filed on that date and the copy of one (1) sheet of drawings containing Figures 11C and 11D supplied with the present petition, and for an indication in Office records that 41 sheets of drawings were present on filing.

Telephone inquires should be directed to the undersigned at 571 272-3231.


Douglas I. Wood
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Office of Petitions